TED THOMPSON

IBLA 86-28 Decided July 7, 1987

Appeal from a decision of the Colorado State Office, Bureau of Land Management, declaring placer mining claims CMC 210670 through CMC 210682 null and void ab initio.

Affirmed.

1. Acquired Lands -- Act of June 17, 1902 -- Mining Claims: Lands Subject To -- Reclamation Lands: Generally

Land acquired by the United States does not become public land by the mere process of its acquisition and, in the absence of specific statutory direction to the contrary, is not open for location of mining claims under 30 U.S.C. § 22 (1982).

APPEARANCES: Ted Thompson, Salt Lake City, Utah, pro se.

OPINION BY ADMINISTRATIVE JUDGE KELLY

Ted Thompson has appealed from a decision of the Colorado State Office, Bureau of Land Management (BLM), dated August 12, 1985, declaring the Oro Grande Nos. 1-13 placer mining claims null and void ab initio. The decision stated that appellant's mining claims had been located on lands previously acquired for reclamation use under the Reclamation Act of June 17, 1902, 43 U.S.C. § 416 (1982), and that such lands were not, therefore, subject to the operation of the public land laws.

The record indicates that on February 5, 1985, Otho S. Ayers executed a warranty deed for the lands at issue, conveying to the United States "all minerals and mineral rights owned by the Grantor" but "[s]ubject to coal, oil, gas, and other mineral rights reserved to or outstanding in third parties." 1/ This deed describes lands identical to those set forth in a land purchase contract, also dated February 5, 1985, entered into between Ayers and the United States. This contract recites that it was made "in pursuance of" the Act of June 17, 1902, commonly known as the Reclamation Act. Inserted into the letterhead of this form contract are the words "Deep

1/ These lands are SW 1/4 NE 1/4, NW 1/4 SE 1/4, and SW 1/4 SE 1/4 sec. 30 and NW 1/4 NE 1/4, SW 1/4 NE 1/4, N 1/2 NW 1/4 SE 1/4, N 1/2 NE 1/4 SW 1/4, and N 1/2 NW 1/4 SW 1/4 sec. 31, T. 47 N., R. 18 W., New Mexico Principal Meridian, Montrose County, Colorado.

Well Injection, Paradox Valley Unit, Colorado River Basin Salinity Control Project." The contract and deed are dated some 2 months prior to the date of location (April 13) shown on each of appellant's notices of location. 2/

In his statement of reasons, appellant contends that "[a]fter the Federal Govt. bought this private property the mineral location was returned to the public Domain." Appellant further states that the lands at issue were acquired by the Bureau of Reclamation for use as a drill site and pump station, and that his placer claims are compatible with such uses and with the Department's policy of multiple use.

[1] Section 7 of the Act of June 17, 1902, as amended, 43 U.S.C. § 421 (1982), authorizes the Secretary of the Interior to acquire by purchase or condemnation any property rights necessary in carrying out the provisions of the Reclamation Act. Contrary to appellant's argument that lands so acquired are returned to the public domain upon their purchase, such lands are from the outset segregated from the public domain. J. D. Mell, 50 L.D. 308, 313 (1924). Although acquired lands are lands belonging to the United States, they are not "public lands" within the technical meaning of that term. Opinion of the Assistant Attorney General, 34 L.D. 480, 482 (1906). As such, these lands are not controlled by laws governing the disposition of public lands. Id.

In Rawson v. United States, 225 F.2d 855 (9th Cir. 1955), the Court of Appeals for the Ninth Circuit held:

> It may be stated as a universal proposition that patented lands reacquired by the United States are not by mere force of the reacquisition restored to the public domain. Absent legislation or authoritative directions to the contrary, they remain in the class of lands acquired for special uses, such as parks, national monuments, and the like-areas which it could not rationally be argued remain open to location and exploration under the mineral laws.

Recent decisions by this Board have followed the Rawson standard. See, e.g., Roberts & Koch, 95 IBLA 239, 242 (1987), involving an application to lease for oil and gas lands acquired pursuant to the Colorado River Basin Salinity Control Act, 43 U.S.C. §§ 1571-1599 (1982); Silver Buckle Mines, Inc., 84 IBLA 306, 309 (1985), involving a mining location on lands acquired in 1938 pursuant to 16 U.S.C. § 569 (1982) (General Donation Act) and 16 U.S.C. § 555 (1982) (national forest headquarters sites). But see Junior L. Dennis, 61 IBLA 8 (1981), involving lands acquired under section 205 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1715 (1982).

Regulation 43 CFR 3811.2-9 sets forth a Departmental policy that acquired lands are not open to mineral location. That regulation states:

2/ The notices of location show Cardel Dumas to be a co-locator of the claims at issue.

"Minerals in acquired lands of the United States are not subject to mining location but the minerals therein may be acquired in accordance with the regulations contained in Part 3500." Part 3500 does not avail appellant in the instant case, however, because that part is devoted to the leasing of solid minerals other than coal and oil shale.

Appellant does not indicate the existence of any legislation or authoritative direction that opened the subject lands to mineral location. In the absence of such authority, BLM's decision must be affirmed.

A second reason for affirming BLM's finding that the Oro Grande claims were null and void ab initio is set forth in the penultimate paragraph of BLM's decision. Therein, BLM notes that at the time Thompson located the Oro Grande claims, the land office records showed the land to be patented, i.e., in private ownership. Our review of the master title plat for T. 47 N., R. 18 W., New Mexico Principal Meridian, confirms that, as of June 18, 1985, the plat showed both the surface and mineral estate of the subject lands to be outside Federal ownership. The effect of this notation is governed by the notation rule. In Shiny Rock Mining Corp., 75 IBLA 136, 138 (1983), we explained the rule:

> Under this so-called "notation rule," if the BLM records have been noted to reflect the devotion of land to a particular use that is exclusive of another conflicting use, no incompatible rights in the land can attach by reason of any subsequent application until the record has been changed to reflect the availability of the land for the desired use. This rule generally applies even where the notation was posted to the records in error or where the segregative use so noted is void, voidable, or has terminated or expired.

Thus, even if lands acquired pursuant to the Reclamation Act were open to mining location as appellant contends, the notation rule would preclude appellant's mining locations until the master title plat had been changed.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Colorado State Office is affirmed.

John H. Kelly
Administrative Judge

We concur:

James L. Burski
Administrative Judge

R. W. Mullen
Administrative Judge